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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,904	11/13/2003	David J. Baker	25090A	9434
22889	7590	05/30/2007		
OWENS CORNING			EXAMINER	
2790 COLUMBUS ROAD			HALPERN, MARK	
GRANVILLE, OH 43023				
			ART UNIT	PAPER NUMBER
			1731	
			MAIL DATE	DELIVERY MODE
			05/30/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/712,904	<b>Applicant(s)</b> BAKER ET AL.	
	<b>Examiner</b> Mark Halpern	<b>Art Unit</b> 1731	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18,27-32 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18,27-32,34-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1) A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/17/2007 has been entered.

Claims 1, 12, 15, 27, 29, 31 are amended.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2) Claims 1, 3-6, 8, 12-13, 15-17, 27-32, are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Van Dornick (3,525,604). Van Dornick discloses a melting furnace for refining palletized metalliferous materials. The furnace is an elongated channel and includes an upstream end, a downstream end, two side walls a floor and a roof. The exhaust stack is located at the downstream end, is located downstream of all the burners, and is in communication with the downstream end of the furnace. As shown in Figure 1, the location of the stack at the discharge wall, therefore it is 100 % away from the charge entry. The charge entry of melting materials and the burners are located at the upstream end (col. 3, line 62 to col. 7, line 12, Figures 1, 2). The charge entry apparatus reads on a charger, which is supplying glass forming material, slag (see Figures 1, 2). The furnace of Van Dornick is capable of melting glass, or in the least, it would have been obvious to one skilled in the art at the time the invention was made, that the furnace of Van Dornick be capable of melting glass, because there no specified structural differences between the instant furnace and the furnace of Van Dornick, and further the melting furnace of Van Dornick operates at temperatures of 3000 to 3600 °F (1648 to 1982 °C) as does a furnace for melting glass.

Independent Claims 1, 12, 15, 27, 29, are amended to recite "the upstream end and the downstream end being configured to allow blending of the glass-forming material;" and "the exhaust being positioned to allow exhaust gases to provide additional heat to the melting glass-forming material, and being positioned to allow at least some air-entrained glass-forming materials to settle back into the melting glass as

exhaust gases travel from the upstream end to the downstream end.", and independent Claim 31 is amended to recite "the exhaust being positioned to i) allow exhaust gases to provide additional heat to the melting glass-forming material, and ii) allow at least some air-entrained glass-forming materials to settle back into the melting glass as exhaust gases travel from the upstream end to the downstream end". The above limitations in claims 1, 12, 15, 27, 29, 31 have been considered and deemed to be method limitations in the apparatus claims that do not structurally differentiate over the cited prior art.

3) Claims 2, 7, 10-11, 18, are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Dornick in view of Pflugl (5,925,165).

Claim 2: Van Dornick is applied as above for claim 1, Van Dornick fails to disclose burner mounted in the roof of the furnace. Pflugl discloses glass melting furnace having multiple burners 9, 10, located and mounted in the roof of the furnace (col. 3, line 18 to col. 4, line 46 and Figures 1, 2). It would have been obvious, to one skilled in the art at the time the invention was made, to combine the teachings of Van Dornick and Pflugl, because such a combination would provide for a more even heating of the melted material in the furnace of Van Dornick.

Claims 7, 10-11, 18: Pflugl glass melting furnace has exhaust ducts 25, 38 located downstream of all of burners (col. 3, line 18 to col. 4, line 46 and Figures 1, 2).

4) Claims 9, 14, are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Dornick in view of Hoke (6,519,973). Van Dornick is applied as above for claims 1, 12, Van Dornick does not disclose that the exhaust is located at a sidewall of the furnace. Hoke discloses a glass melting furnace where exhausts 145, 147, are located

at sidewalls of the furnace as shown in Figure 7. It would have been obvious, to one skilled in the art at the time the invention was made, to combine the teachings of Van Dornick and Hoke, because such a combination would improve glass quality in the design of Van Dornick as disclosed by Hoke (Abstract).

5) Claims 34-37, are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Dornick in view of Simpson (US 2001/0039813) or LeBlanc (6,237,369). Van Dornick is applied as above for claim 1, Van Dornick does not disclose further a burner supplying heat to downstream fining end. Simpson and/or LeBlanc disclose a glass melting furnace, where a burner is installed in the roof of the furnace supplying heat toward downstream end of the furnace. The burner is mounted at an angle about 20 degrees to the vertical. See Figures 2A, 3, 5, 7 of Simpson. See Figures 1-3, of LeBlanc. It would have been obvious to combine the teachings of Van Dornick and Simpson and/or LeBlanc, because such a combination would permit melting control in the furnace of Van Dornick.

### ***Response to Amendment***

6) Applicants' arguments filed 5/17/2007, have been fully considered but they are not persuasive.

Applicants allege that the cited prior art, Van Dornick, does not disclose the invention because Claims 1, 12, 15, 27, 29, are amended to recite "the upstream end and the downstream end being configured to allow blending of the glass-forming material;" and "the exhaust being positioned to allow exhaust gases to provide

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additional heat to the melting glass-forming material, and being positioned to allow at least some air-entrained glass-forming materials to settle back into the melting glass as exhaust gases travel from the upstream end to the downstream end.", and Claim 31 is amended to recite "the exhaust being positioned to i) allow exhaust gases to provide additional heat to the melting glass-forming material, and ii) allow at least some air-entrained glass-forming materials to settle back into the melting glass as exhaust gases travel from the upstream end to the downstream end".

The above limitations in claims 1, 12, 15, 27, 29, 31 are method limitations in the apparatus claims and they do not structurally differentiate over the cited prior art. The upstream end and the downstream end configuration to allow blending of the glass-forming material is a method operational limitation. The exhaust positioning to allow exhaust gases to provide additional heat to the melting glass-forming material, and being positioned to allow at least some air-entrained glass-forming materials to settle back into the melting glass as exhaust gases travel from the upstream end to the downstream end, is a method operational limitation.

Applicants allege that Van Dornick, does not disclose a glass-melting furnace, that Van Dornick discloses a melting furnace for refining palletized metalliferous materials.

The furnace of Van Dornick is capable of melting glass. There is no structural uniqueness of the instant furnace that would not permit the furnace of Van Dornick to melt glass. Further the melting furnace of Van Dornick operates at temperatures of 3000 to 3600 °F (1648 to 1982 °C) as does a furnace for melting glass.

Applicants allege that the Van Dornick furnace discloses internal and overflow dam, slag removal at different locations and operational differences of prior art furnace.

The present claims are open claims by the use of the term "comprising", therefore the Van Dornick furnace may include internal furnace additions.

Applicants allege that Van Dornick does not address the operational problems associated with glass melting.

The present invention must structurally and not operationally differentiate over the prior art.

Applicants allege that Van Dornick, does not disclose a furnace having an exhaust so that exhaust gases are only exhausted from the exhaust.

Van Dornick shows flue 13 in the downstream end. See Figure 1.

Applicants allege that examiner is using hindsight reasoning in the use of the Van Dornick furnace.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The dependent claims disposition follows the disposition of the independent



claims.

***Conclusion***

7) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Halpern whose telephone number is 571-272-1190. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

/Mark Halpern/  
Primary Examiner  
Art Unit 1731